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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,635	06/08/2001	James N. Herron	3278.2US	9774
24247	7590	06/07/2004	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			LAM, ANN Y	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/877,635

Applicant(s)

HERRON ET AL.

Examiner

Ann Y. Lam

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

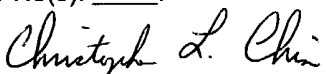
Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 21-33, 45 and 46.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800-1641

Continuation of 2. NOTE: The amendment adding the language "and an opposite surface of said waveguide" would require further search and consideration. The amendment substantially changes the scope of the claims since a detector that detects light passing through the planar surface is different from a detector that detects light passing through the planar surface and an opposite surface. Examiner would also like to note that Applicant's newly proposed amendment regarding the opposite surface of the waveguide does not make it clear where the opposite surface is located. That is, it is not clear whether this opposite surface is opposite the planar surface or opposite some surface, i.e., opposite any surface, on the waveguide.

Continuation of 5. does NOT place the application in condition for allowance because: with respect to Applicant's argument concerning the new limitations, the arguments are not considered because the amendments will not be entered for the reasons set forth above. As to Applicant's other arguments, the arguments are not persuasive because they relate to intended use and the Foster-Jackowski device is capable of performing the claimed functions. Applicant argues that as to claim 22, neither Foster nor Jackowski teach a waveguide which is optically associated with a rear lens oriented for reading light passing through the waveguide to monitor coupling efficiency and beam quality. Examiner reasserts that Foster discloses light passing through a waveguide and rear lens oriented for reading light passing through the waveguide. As to claim 26, Applicant argues that Foster and Jackowski do not disclose a controller that is configured to effect correlation of at least one indicator of coronary artery disease in a liquid biological sample in a continuous fashion, but rather at a specific point in time. Examiner asserts that the controller in Foster can be used in a continuous fashion. As to claims 27 and 29, Applicant argues that Foster and Jackowski do not disclose a controller configured to effect monitoring and correlating until a reliable determination is made of whether at least one indicator is coronary artery disease is present in a liquid biological sample in an amount indicative of coronary artery disease, but rather the references appear to teach electronics that effect a single sweep of a surface of a waveguide and process the data obtained during that sweep. Examiner asserts that the controller in Foster is capable of monitoring and correlating until a reliable determination is made of whether an indicator is present in an amount indicative of coronary artery disease. As to claim 31, Applicant argues that Foster and Jackowski do not disclose a controller that is configured to substantially simultaneously determine concentrations of a plurality of indicators of coronary artery disease, but rather Foster teaches a single sample may be simultaneously run. Examiner notes that claim 31 does not require that the indicators be of different types of indicators. Thus, the Foster controller is capable of substantially simultaneously determining concentrations of a plurality of indicators of coronary artery disease.